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8
9 **SUPERIOR COURT OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES**

11 J. ROE,

12 Plaintiff,

13 v.

14 M. ORTH,
15 T. SMITH,
16 F. X. NETWORKS, L.L.C.,
17 NETFLIX, INC., and
18 DOES 1 through 100,

19 Defendants.

Case Number:

**COMPLAINT TO ENFORCE
CONFIDENTIAL SETTLEMENT
AGREEMENT AND FOR OTHER
RELIEF;
JURY DEMAND**

ACTION FILED:

____ MARCH 2019

TRIAL DATE:

Not set.

1 **JURISDICTION**

2 1. This Court has jurisdiction over the claims for relief asserted herein
3 pursuant to Article 6, Section 10 of the Constitution of the State of California.

4 **VENUE**

5 2. Venue of this civil action is properly fixed in Los Angeles County,
6 California, pursuant to Code of Civil Procedure sections 395 and 395.5.

7 **PARTIES**

8
9 3. Plaintiff, J. Roe (**hereinafter "Plaintiff"**), is a citizen of the United States
10 of America, and of the State of California. J. Roe is a fictitious name used by Plaintiff
11 to protect Plaintiff's legitimate privacy rights, as well as to seek to mitigate damages
12 to the extent possible. *Cf.: Doe v. Lincoln Unified School Dist.* (2010) 188
13 Cal.App.4th 758, 766-767.

14 4. Plaintiff is informed and believes, and thereupon avers, that Defendant,
15 M. Orth (**hereinafter "Orth"**), is a citizen of the United States of America, but not of
16 the State of California.

17 5. Plaintiff has no information regarding the citizenship or domicile of
18 Defendant, T. Smith (**hereinafter "Smith"**).

19 6. Plaintiff is informed and believes, and thereupon avers, that Defendant,
20 F. X. Networks, L.L.C. (**hereinafter "FXN"**), is a limited liability company whose
21 principal place of business is within the State of California.

22 7. Plaintiff is informed and believes, and thereupon avers, that Defendant,
23 Netflix, Inc. (**hereinafter "Netflix"**), is a corporations whose principal place of
24 business is within the State of California.

25 8. Plaintiff is informed and believes, and thereupon avers, that DOES 1
26 through 100 are other natural persons, corporations, limited liability companies,
27 general partnerships, limited partnerships, limited liability partnerships, trusts,

1 unincorporated associations, and/or other entities of any kind or character, who/which
2 have incurred liability to Plaintiff in relation to the transactions and/or occurrences
3 which are the subject of the instant Complaint, and/or who/which have any interest in
4 the subject of the instant Complaint.

5 9. Except as may be described herein, Plaintiff is as yet ignorant of the true
6 names, capacities, and nature and extent of participation in the course of conduct
7 alleged herein of the persons sued as DOES 1 through 100 inclusive, and Plaintiff is
8 as yet ignorant of the nature and extent of any interest which the persons sued as
9 DOES 1 through 100 inclusive may have in the subject of the instant Complaint;
10 Plaintiff therefore sues these defendants by such fictitious names. Plaintiff will amend
11 this complaint to allege the true names and capacities of the DOE defendants when
12 ascertained.

13
14 **FIRST CLAIM FOR RELIEF**
(fraud and deceit)

(against Defendant, Orth, and DOES 1 through 100)

15 10. The averments contained in paragraphs 1 through 9 hereof are
16 incorporated herein by reference.

17 11. In or about the year 2000, Plaintiff sued Orth (*inter alia*) for recovery of
18 actual and exemplary damages as a remedy for invasion of privacy and/or defamation.

19 12. Plaintiff and Orth (*inter alia*) entered into a confidential settlement
20 agreement (**hereinafter the "CSA"**) in June of 2000; one object of the CSA was to
21 protect Plaintiff from further loss of privacy, further injury to reputation, and further
22 emotional distress, beyond that suffered by Plaintiff as a result of the torts committed
23 by Orth prior to the parties' entry into the CSA.

24 13. Plaintiff will file a motion seeking leave of court to file the CSA under
25 seal.

26 14. The CSA contains numerous covenants by Orth, including an implied
27 covenant of good faith and fair dealing.

28
**COMPLAINT TO ENFORCE CONFIDENTIAL SETTLEMENT AGREEMENT
AND FOR OTHER RELIEF; JURY DEMAND – PAGE 3**

1 15. Orth's entry into the CSA necessarily implied an intention to perform
2 those covenants.

3 16. Orth subsequently breached the primary covenant of the CSA (set out at
4 Sections 3 and 4 thereof).

5 17. Plaintiff first became aware of the breach in early 2019.

6 18. In February of 2019, Plaintiff requested that Orth provide documents and
7 information which might have explained the reasons Orth breached the primary
8 covenant of the CSA. Orth, through counsel, has refused, and continues to refuse, to
9 provide the requested documents and information.

10 19. Plaintiff is presently unaware of any reason for Orth to have breached the
11 CSA, and can imagine no possible reason other than out of Orth's malice toward
12 Plaintiff – malice that pre-existed Orth's entry into the CSA.

13 20. The facts and circumstances of the breach, and the refusal to provide the
14 requested documents and information, strongly imply that Orth never intended to
15 perform the primary covenant of the CSA, and Plaintiff thereupon avers that Orth
16 never intended to perform the primary covenant of the CSA.

17 21. Plaintiff would not have entered into the CSA if Plaintiff had known that
18 Orth had no intention to perform the primary covenant of the CSA.

19 22. Plaintiff's entry into the CSA was induced by fraud, and/or fraud and
20 deceit, and/or promissory fraud.

21 23. Plaintiff did not discover, and could not in the exercise of reasonable
22 diligence have discovered, that Plaintiff had been defrauded until early 2019.

23 24. Plaintiff has sustained actual damages as a result of the above-described
24 fraudulent conduct of Orth.

25 25. Orth is guilty of oppression, fraud, and/or malice, for purposes of Civil
26 Code section 3294, and Plaintiff is therefore entitled to recover exemplary damages
27 for the sake of example and by way of punishing Orth.

28

1 26. The facts set forth hereinabove establish that Plaintiff is entitled to
2 judgment over and against Defendants, Orth, and DOES 1 through 100, jointly and
3 severally, awarding recovery of actual and exemplary damages.

4 WHEREFORE, Plaintiff requests relief as set forth hereinbelow.

5 **SECOND CLAIM FOR RELIEF**
6 **(for recovery of damages for defamation)**
7 **(against Defendants, Orth, Smith, FXN, Netflix, and DOES 1 through 100)**

8 27. The averments contained in paragraphs 1 through 26 hereof are
9 incorporated herein by reference.

10 28. Orth's breach of the primary covenant of the CSA also constituted
11 defamation.

12 29. At a point in time presently unknown to Plaintiff, Orth, Smith, and FXN
13 jointly collaborated on the publication of matter concerning Plaintiff which is both
14 false, and defamatory *per se*, including a false implication that Plaintiff is a chronic
15 abuser of alcohol who consumes alcohol throughout the day.

16 30. Commencing in early 2018, and continuously thereafter, Orth, Smith, and
17 FXN have published and republished the defamatory matter.

18 31. Commencing in early 2019, and continuously thereafter, Orth, Smith,
19 FXN, and Netflix republished the defamatory matter in a manner that was undoubtedly
20 intended to, and did, reach a new group of persons; this effected a repetition by Netflix
21 of Orth's, Smith's, FXN's, earlier defamatory statements, and a recirculation of their
22 earlier defamatory statements to a new audience; said repetition by Netflix was
23 reasonably foreseeable to Orth, Smith, and FXN.

24 32. In or about February of 2019, Plaintiff requested that FXN cease and
25 desist from the ongoing defamation; in doing so, Plaintiff specified the exact words
26 of the defamation; FXN has refused, and continues to refuse, to cease and desist.

27 33. Orth, Smith, and FXN are guilty of oppression, fraud, and/or malice, for
28 purposes of Civil Code section 3294, and Plaintiff is therefore entitled to recover

1 exemplary damages for the sake of example and by way of punishing Orth, Smith, and
2 FXN.

3 34. The facts set forth hereinabove establish that Plaintiff is entitled to
4 judgment over and against Defendants, Orth, Smith, and FXN, and DOES 1 through
5 100, jointly and severally, awarding recovery of actual and exemplary damages; and
6 that Plaintiff is entitled to judgment over and against Defendant, Netflix, awarding
7 recovery of actual damages.

8 WHEREFORE, Plaintiff requests relief as set forth hereinbelow.

9
10 **THIRD CLAIM FOR RELIEF**
11 **(for recovery of damages for false light invasion of privacy)**
12 **(against Defendants, Orth, Smith, FXN, and DOES 1 through 100)**

13 35. The averments contained in paragraphs 1 through 34 hereof are
14 incorporated herein by reference.

15 36. The above-stated facts also constitute the elements of the tort of false
16 light invasion of privacy.

17 37. The ongoing defamation places Plaintiff before the public in a false light
18 that would be highly offensive to a reasonable person; Defendants, Orth, Smith, and
19 FXN, each knew or acted in reckless disregard as to the falsity of the publicized matter
20 and the false light in which the Plaintiff would be placed. Orth has personal
21 knowledge that the defamatory matter was false, because she fabricated it herself.
22 Neither Smith, nor FXN, even bothered to make inquiry of Plaintiff.

23 38. The facts set forth hereinabove establish that Plaintiff is entitled to
24 judgment over and against Defendants, Orth, Smith, and FXN, and DOES 1 through
25 100, jointly and severally, awarding recovery of actual and exemplary damages.

26 WHEREFORE, Plaintiff requests relief as set forth hereinbelow.

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28 ///

1 **FOURTH CLAIM FOR RELIEF**
2 **(for specific performance of settlement agreement)**
3 **(against Defendants, Orth, Smith, FXN, and DOES 1 through 100)**

4 39. The averments contained in paragraphs 1 through 38 hereof are
5 incorporated herein by reference.

6 40. A remedy at law for Orth's future and continuing breach of the primary
7 covenant of the CSA would be inadequate, at a minimum, because Orth is unlikely to
8 have sufficient assets to respond fully in damages. In addition, damages for Orth's
9 future and continuing breach of the primary covenant of the CSA may be irreparable
10 and may only be prevented by specific performance.

11 41. The CSA is just and reasonable, and is supported by adequate
12 consideration.

13 42. The CSA is subject to specific performance by both of the contracting
14 parties.

15 43. The terms of the CSA are sufficiently definite for the Court to know what
16 to enforce.

17 44. As set out above, Orth has refused to provide certain documents and
18 information to Plaintiff. Plaintiff is informed and believes that Orth is in contractual
19 privity to both Smith and FXN, and that Orth has a contractual right of control over
20 Smith's and FXN's ongoing publication of the defamatory matter.

21 45. The facts set forth hereinabove establish that Plaintiff is entitled to
22 judgment over and against Defendants, Orth, Smith, and FXN, ordering that they
23 comply prospectively (*i.e.*, as to all future re-publication) with the primary covenant
24 of the CSA; alternatively, if this Court finds that it cannot order Smith and FXN to
25 specifically perform such covenants, then Plaintiff is entitled to judgment over and
26 against Defendant, Orth, ordering that she use her contractual powers over Smith and
27 FXN to prevent them prospectively (*i.e.*, as to all future re-publication) from engaging
28 in conduct contrary to the primary covenant of the CSA.

1 WHEREFORE, Plaintiff requests relief as set forth hereinbelow.

2 **FIFTH CLAIM FOR RELIEF**
3 **(for recovery of damages for breach of contract)**
4 **(against Defendant, Orth, and DOES 1 through 100)**

5 46. The averments contained in paragraphs 1 through 45 hereof are
6 incorporated herein by reference.

7 47. This Fifth Claim for Relief seeks recovery of damages for breaches of the
8 CSA which were committed prior to the date on which the Court orders specific
9 performance of the CSA.

10 48. Plaintiff has sustained actual damages as a direct and proximate result of
11 Orth's breach of the CSA.

12 49. The facts set forth hereinabove establish that Plaintiff is entitled to
13 judgment over and against Defendants, Orth, and DOES 1 through 100, jointly and
14 severally, awarding damages as a remedy for breach of the CSA.

15 WHEREFORE, Plaintiff requests relief as set forth hereinbelow.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff requests the following relief:

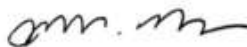
- 18 a. On the First Claim for Relief, judgment over and against Defendants,
19 Orth, and DOES 1 through 100, jointly and severally, awarding recovery
20 of actual and exemplary damages;
- 21 b. On the Second Claim for Relief, judgment over and against Defendants,
22 Orth, Smith, and FXN, and DOES 1 through 100, jointly and severally,
23 awarding recovery of actual and exemplary damages; and judgment over
24 and against Defendant, Netflix, awarding recovery of actual damages;
- 25 c. On the Third Claim for Relief, judgment over and against Defendants,
26 Orth, Smith, and FXN, and DOES 1 through 100, jointly and severally,
27 awarding recovery of actual and exemplary damages;
- 28

- 1 d. On the Fourth Claim for Relief, judgment over and against Defendants,
2 Orth, Smith, and FXN, ordering that they comply prospectively (*i.e.*, as
3 to all future re-publication) with the primary covenant of the CSA;
4 alternatively, if this Court finds that it cannot order Smith and FXN to
5 specifically perform such covenants, judgment over and against
6 Defendant, Orth, ordering that she use her contractual powers over Smith
7 and FXN to prevent them prospectively (*i.e.*, as to all future re-
8 publication) from engaging in conduct contrary to the primary covenant
9 of the CSA;
- 10 e. On the Fifth Claim for relief, judgment over and against Defendants,
11 Orth, and DOES 1 through 100, jointly and severally, awarding damages
12 as a remedy for breach of the CSA; and
- 13 f. such other and further relief, at law or in equity, to which this Court finds
14 Plaintiff to be justly entitled.

15
16 Dated: 19 March 2019

Respectfully submitted,

17 JAMES G. BOHM
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27 [COMPLAINT filed 19MAR19.wpd]
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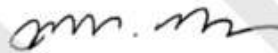
1 **JURY DEMAND**

2 Plaintiff hereby demands trial by jury of all issues triable by a jury, pursuant to
3 applicable law, including, but not necessarily limited to Article I, Section 16 of the
4 California Constitution, and/or Section 592 of the California Code of Civil Procedure.

5
6 Dated: 19 March 2019

Respectfully submitted,

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[COMPLAINT filed 19MAR19.wpd]